

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C09-0358 MHP

SHANNON O. MURPHY,

Plaintiff(s),

vs.

DEPARTMENT OF THE ARMY, et al.,

Defendant(s).

**ORDER DISMISSING
COMPLAINT AND
DENYING IN FORMA
PAUPERIS STATUS**

Plaintiff files this pro se action against the Department of the Army and the Adjutant General - California Army National Guard. The gravamen of plaintiff's case is difficult to discern, but it appears that plaintiff may have been issued orders and that some period of time was extended to accommodate his medical condition. He appears to claim that he suffered "extreme hardship and inconvenience to cause Physical and mental discomfort [sic]". Compl. at 1. Plaintiff also refers to the need to return home and the lack of accommodations. He seeks compensatory damages of seven million dollars, five million dollars in punitive damages and one million per year for five years.

Beyond this the complaint is rambling and incomprehensible. It is not possible to determine the full gist of plaintiff's complaint, what he is seeking other than an extraordinary amount of damages, or the basis for his claims.

United States District Courts are courts of limited jurisdiction and must determine their


jurisdiction before entertaining an action. If the court is without jurisdiction the action must be dismissed. This Circuit has held that a person challenging military actions or decisions must meet two threshold requirements before the court may review such claims or exercise jurisdiction. Plaintiff must allege a violation of a federal statute, constitutional provision or military regulation and must allege exhaustion of "available intraservice remedies". Wenger v. Monroe, 282 F.3d 1068, 1072 (9th Cir. 2002) (as amended on denial of rehearing and rehearing en banc). Plaintiff has alleged none of these. It is impossible to determine from the complaint what federal statute or regulation he is relying on to assert his claims and he does not allege what service remedies he has pursued and exhausted. Thus, this court lacks jurisdiction or the basis for review of any military decision pertaining to plaintiff.

Where the court lacks jurisdiction or any basis for adjudicating plaintiff's claims, or where the claims are so incomprehensible that the court cannot determine the grounds for such jurisdiction or adjudication, the court must dismiss the complaint and deny *in forma pauperis* status. See 28 U.S.C. §1915(e)(2).

Accordingly,

IT IS HEREBY ORDERED that the complaint herein is DISMISSED without prejudice and the application to proceed *in forma pauperis* is DENIED.

Date: January 28, 2009



MARILYN HALL PATEL
Judge
United States District Court
Northern District of California